



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN A. AND BETSY R. BARKER)

For Appellants: Gandy, Scott, Tollefson & Co.
Certified Public Accountants
William W. Brown
Certified Public Accountant

For Respondent: Allen R. Wildermuth
Counsel

OPINION

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John A. and Betsy R. Barker against a proposed assessment of additional personal income tax in the amount of \$254.54 for the year 1975.

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The question presented by this appeal is whether respondent properly disallowed appellants' claimed deduction of State Disability Insurance Fund (SDI) contributions for 1975.

Appellants filed a joint California personal income tax return for 1975 which included a deduction in the amount of \$180.00 for their SDI contributions. Respondent determined that this was not an allowable deduction and issued a proposed assessment reflecting that disallowance and an adjustment for gain on the sale of a rental property. The latter adjustment was agreed to by appellants, but the SDI contribution disallowance was protested. The tax in controversy, therefore, is apparently \$10.80. After appellants' protest, respondent affirmed its assessment and this timely appeal followed.

This board has previously held that SDI contributions are taxes on or measured by income which, pursuant to subdivision (c)(2)(B) of Revenue and Taxation Code section 17204, are not deductible. (Appeal of Dwayne W. and Dorothy L. Heckman, Cal. St. Bd. of Equal., March 31, 1982; Appeal of Linn L. and Harriette E. Collins, Cal. St. Bd. of Equal., Nov. 18, 1980; Appeal of Arnold E. and Mildred H. Galef, Cal. St. Bd. of Equal., April 10, 1979.) Appellants here, however, argue that SDI contributions are taxes paid in carrying on a trade or business, which are deductible under subdivision (a) of Revenue and Taxation Code section 17204.

Appellants rely on the case of James R. McGowan, -67 T.C. 599 (1976), where the United States Tax Court found that contributions similar to those for SDI would be deductible "trade or business taxes" within the meaning of section 164(a) of the Internal Revenue Code of 1954 (I.R.C.). They conclude that we must allow the deduction because the "trade or business taxes" language of the California statute is the same as that of the federal statute.

Revenue and Taxation Code section 17204, as it read in 1975, provided, in pertinent part:

(a-) Except as otherwise provided in this section and section 17205, the following taxes and assessments shall be allowed as a deduction for the taxable year within which paid or accrued:

- (1) State and local, and foreign, real property taxes . . .;
- (2) State and local personal property taxes;
- (3) State and local general sales taxes;

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- (4) State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels; and

In addition, there shall be allowed as a deduction state and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in Section 17252 (relating to expenses for production of income).

* * *

- (c) No deduction shall be allowed for the following taxes:

* * *

- (2) Taxes on or according to or measured by income or profits paid or accrued within the taxable year imposed by the authority of:

* * *

- (B) Any state

Appellants are correct in their observation that the last sentence of both section 17204, subdivision (a) and I.R.C. section 164(a) allows, the deduction of "trade or business taxes." However, I.R.C. section 164(a) also allows the deduction of state income taxes, while subdivision (c)(2) of section 17204 specifically prohibits the deduction of such taxes. This fundamental difference between the two statutes is fatal to appellants' argument.

Under the federal law, as interpreted in the case of James R. McGowan, supra, SDI contributions would be deductible as either "trade or business taxes" or as taxes "on or according to or measured by income." The California Supreme Court, however, in Beamer v. Franchise Tax Board, 19 Cal.3d 467 [138 Cal.Rptr.199] (1977), held that the deduction provided in subdivision (a) of section 17204 for taxes accrued in carrying on a trade or business was conditioned by the opening caveat "except as otherwise provided in this section" The court concluded that if such taxes were on or according to or measured by income, they were nondeductible pursuant to subdivision (c)(2).

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Therefore, even if SDI contributions are considered "trade or business taxes," they are still nondeductible because they are also taxes on or according to or measured by income. Although SDI contributions might be deductible for federal tax purposes under I.R.C. section 164(a), the differences between that statute and Revenue and Taxation Code section 17204 preclude similar treatment for state tax purposes.

For the reasons stated above,. respondent's action must be sustained.

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ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED pursuant to section 18595 of the Revenue and Taxation Code that the action of the Franchise Tax Board on the protest of John) A. and Betsy R. Barker against a proposed assessment of additional personal income tax in the amount of \$254.54 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February, 1983, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis, Member

Ernest J. Dronenburg, Jr. _____, Member

Richard Nevins, Member

_____, Member